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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

WYATT B. and NOAH F. by their next friend Michelle McAllister; KYLIE R. and ALEC R. by their next friend Kathleen Megill Strek; UNIQUE L. by her next friend Annette Smith; SIMON S. by his next friend Paul Aubry; RUTH T. by her next friend Michelle Bartov; BERNARD C. by his next friend Ksen Murry; NAOMI B. by her next friend Kathleen Megill Strek; and NORMAN N. by his next friend Tracy Gregg, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

TINA KOTEK, Governor of Oregon in her official capacity; FARIBORZ PAKSERESHT, Director, Oregon Department of Human Services in his official capacity; APRILLE FLINT-GERNER, Director, Child Welfare in her official capacity; and OREGON DEPARTMENT OF HUMAN SERVICES,

Defendants.

Case No. 6:19-cv-00556-AA

**DEFENDANTS' SUPPLEMENTAL  
LAY WITNESS STATEMENTS**

Defendants hereby submit the following Supplemental Lay Witness Statements in advance of trial and in this matter.

### DEFINED TERMS

Abbreviation	Term
2016 PK Report	2016 Public Knowledge report
2023 PK Report	2023 Moss/Public Knowledge report
A&M	Alvarez & Marsal
ACF	Administration of Children and Families
ADA	Americans with Disability Act
AFCARS	Adoption and Foster Care Analysis and Reporting System
BRS	Behavior Rehabilitative Services
CANS	Child and Adolescent Needs and Strengths
CAPTA	Child Abuse Prevention and Treatment Act
CARA	Comprehensive Addiction & Recovery Act
CCAs	Child-caring agencies
CCOs	Coordinated Care Organizations
CFPRP	Child Fatality Prevention and Review Program
CFSR	Child and Family Services Review
Child Welfare	Child Welfare Division of ODHS
CIRT	Critical Incident Review Team
CPS	Child Protective Services
CQI	Continuing Quality Improvement
CRB	Citizen Review Board
CTP	Comprehensive Transition Plan
CWOB	Child Welfare Oversight Board
DAS	Department of Administrative Services
District 2	Multnomah County
ERG	Employee Resource Group
FFPSA	Family First Prevention Services Act
FOCUS	Focused Opportunities for Children Utilizing Services
foster children and young adults	Children and young adults experiencing foster care
foster kids	Young people experiencing foster care
FTE	Full-time equivalent
GCC or the Cabinet	Governor's Children's Cabinet
ICWA	Indian Child Welfare Act

Abbreviation	Term
IDD	Intellectual and Developmental Disabilities
ILP	Independent Living Housing Subsidy Program and the Independent Living Program
KEEP	Keeping Foster and Kin Parents Supported and Trained
LIFE	Leveraging Intensive Family Engagement
MAPS	Mentoring, Assisting, Promoting Success (position type within Child Welfare)
MIC rate	Maltreatment in Care Rate
NTDC	National Training and Development Curriculum
ODDS	Office of Developmental Disabilities Services
ODE	Oregon Department of Education
ODHS	Oregon Department of Human Services
OHA	Oregon Health Authority
OPAL-K	Oregon Psychiatric Access Line, for kids
ORCAH	Oregon's Child Abuse Hotline
ORICWA	Oregon Indian Child Welfare Act
OR-Kids	ODHS's core child welfare services database application; Oregon's version of a CCWIS (Comprehensive Child Welfare Information System)
ORRAI	Office of Research Reporting Analytics and Implementation
OTIS	Office of Training Investigations and Safety
OYA	Oregon Youth Authority
PAC	Parent Advisory Council
POP	Policy Option Package
PRIDE	People Respecting Individual Differences Everywhere
PRTF	Psychiatric Residential Treatment Facility
PSU	Portland State University
QMHP	Qualified Mental Health Professional
QPR	Question, Persuade, Refer
RAFT	Resource and Adoptive Family Training
SDDR	Service Delivery Data Report
SDM Tool	Structured Decision Making© Screening and Response Time Assessment Tool

Abbreviation	Term
Self Sufficiency Division	Self-Sufficiency Division of ODHS
SNAP	Food benefits for families and individuals
SOCAC	System of Care Advisory Council
SOGIE	Sexual orientation, gender identity and expression
SSIT	Safe Systems Improvement Tool
the EO	Governor Brown's Executive Order 19-03, dated April 18, 2019

In addition to all lay and expert witnesses defendants previously identified for trial, defendants may call the following witnesses. The parties are submitting witness statements before this Court rules on the parties' motions in limine and *Daubert* motions. By identifying witnesses who will discuss evidence plaintiffs will present at trial, defendants do not concede that the evidence is admissible.

**I. Francis Maher (1.0 hour of direct testimony).**

Francis Maher is the Executive Director of St. Mary's Home for Boys ("St. Mary's") in Beaverton, Oregon, a position he has held since 2009. Mr. Maher will testify regarding his more-than-two-decades long career in the world of behavioral health on behalf of children and young adults in Oregon. He will present testimony regarding his personal background and role at St. Mary's, the levels of care which his organization provides, the types of children/young adults his organization regularly sees, and the impacts of Oregon Senate Bills 1515 (2016) and 710 (2021) on St. Mary's capacity to serve children and young adults in Oregon. Mr. Maher will also explain how the COVID-19 pandemic has impacted his organization's workforce and ability to serve children and young adults in Oregon's community.

**A. Professional background.**

Since 2009, Mr. Maher has served as the Executive Director of St. Mary's, a residential treatment facility for adolescent males ages 12-18. As Executive Director, Mr. Maher is

responsible for the executive leadership, planning, direction, and execution of all facets of St. Mary's operations, including overseeing the facility's licensing and certification with Child Welfare. Prior to becoming Executive Director, Mr. Maher served for two years as the Assistant Director of St. Mary's, along with various other positions within the organization, including as a day treatment director, case manager, assistant manager, weekend supervisor, and residential counselor. Mr. Maher will testify that he has held positions in virtually every level of care (hygiene, getting children to school, administration, etc.) within St. Mary's facility. He holds a B.A. in Psychology, which he obtained from Lewis & Clark College in 1995, and a Masters in Business Administration, which he obtained from Phoenix University in 2003.

**B. St. Mary's Facility.**

St. Mary's is a residential treatment facility which offers in-patient residential services and day treatment programs for adolescent males, ages 12-18, with various behavioral and mental health needs. The facility has served as a licensed child-caring agency provider for Child Welfare for approximately 30 years. Some of the types of behaviors which St. Mary's helps its patients to address are depression, anxiety, and other trauma-induced conduct, including aggression, self-harming, sexually harming, and other threatening behaviors. Mr. Maher will explain that St. Mary's employees try to create a safe environment, both physically and mentally, to help its adolescent male patients learn to better self-regulate their emotions.

**C. Senate Bill 1515 (2016) and Senate Bill 710 (2021).**

In addition to describing the types of care and treatments available at St. Mary's, Mr. Maher will testify regarding his understanding of Oregon Senate Bills 1515 (2016) and 710 (2021), and the subsequent impacts such legislation has had on child-caring agencies such as St. Mary's. Starting with Senate Bill 1515, Mr. Maher will testify that child-caring agencies now face increased regulation and scrutiny in their licensing and certification process, including

enhanced reporting and financial auditing. These additional regulatory processes have made it more difficult for child-caring agencies like St. Mary's to stay in business and to want to enter into Oregon's community health landscape servicing children and adolescents with behavioral or mental health needs.

Mr. Maher will also testify regarding his understanding of Oregon Senate Bill 710 (2021), which, among other things, eliminated the use of certain types of physical restraints for children and adolescents receiving services from a licensed child-caring agency. Mr. Maher will describe the various types of physical restraints covered by S.B. 710 and the kind of physical restraints which St. Mary's utilizes, known as Crisis Prevention Institute, or "CPI," restraints. As a result of S.B. 710, Mr. Maher will explain that St. Mary's can no longer accept many of the adolescent males his facility used to admit. Many of these young people are now being admitted to, or waiting on a referral or admission to, a facility with a higher level of care. Likewise, St. Mary's is discharging more children and young adults who present with aggressive and threatening behaviors than it did prior to S.B. 710 out of fear of liability, including injury to staff or losing one's license as a result of instituting an improper physical restraint under the bill. Finally, Mr. Maher will share that St. Mary's worker's compensation insurance has increased as a result of increased injuries to staff because of an enhanced concern that applying a physical restraint to a patient will result in a violation of S.B. 710.

These are just a handful of the impacts of Senate Bill 1515 and Senate Bill 710 on child-caring agencies like that of St. Mary's that Mr. Maher will describe. Mr. Maher will explain how such impacts lead to reduced capacity and less ability to serve children and young adults with behavioral and mental health needs who are referred to his program by Child Welfare.

**D. COVID-19 pandemic impacts.**

Finally, Mr. Maher will talk about impacts of the COVID-19 pandemic on his facility and its workforce, including the financial difficulties St. Mary's faced in having to ensure appropriate round-the-clock staffing of its facility to service the needs of the children and young adults within its care, while at the same time being without the ability to take on more patients out of concern for community spread of the disease. In the last few years, his facility has also experienced an increased rate of staff turnover, which in turn has forced St. Mary's to reduce the number of beds it has available to serve male adolescents in need of care. Mr. Maher will testify that some of the federal and state relief funding has helped ease these financial and workforce struggles, but St. Mary's nevertheless continues to operate at less than its pre-COVID-19 capacity.

**II. Becky Smallwood (30 minutes of direct testimony).**

Becky Smallwood is a Diagnosis and Evaluation Coordinator within the Case Management Services and Supports Unit in the ODHS Office of Developmental Disabilities Services ("ODDS") program. ODDS provides services and support for individuals with intellectual and developmental disabilities who qualify, including the children in ODHS's care. Ms. Smallwood has been serving as a Diagnosis and Evaluation Coordinator at ODDS since September 2014. Her duties include providing eligibility-related training and consultations to local Community Developmental Disabilities Programs ("CDDPs"), eligibility policy and rule analysis and revision, and eligibility competency reviews (quality assurance). In Oregon, CDDPs determine eligibility for an individual's access to ODDS's intellectual and developmental disabilities (I/DD) services. Diagnosis and Evaluation Coordinators provide consultations for cases with complex eligibility questions and participate in eligibility appeal hearings as needed to answer any eligibility-related questions from administrative law judges.

Ms. Smallwood will testify about the eligibility criteria and application process for ODDS's I/DD services for individuals or guardians applying. As Ms. Smallwood will explain, a child first must be diagnosed with either a developmental disability or an intellectual disability. A developmental disability ("DD") is a severe neurological, mental, or physical impairment, or combination of mental and physical impairments, that begins in and directly affects the brain. It also must cause significant impairment of daily living skills such as, but not limited to, communicating, grooming, dressing, safety and social skills, and the individual must require training and support similar to an individual with an intellectual disability.

Ms. Smallwood will also testify that intellectual disability ("ID") means significantly sub-average intellectual functioning with an IQ of 70 and under, along with a lack of daily living skills such as, but not limited to, communicating, grooming, dressing, safety and social skills. For children with IQs of 65 or less, significant impairment is implied and an assessment is not required but must be considered if one exists. For children with IQs of 65-70, significant impairment due to ID must be affirmed by an adaptive behavior assessment. Children with IQs of 71-75 may be considered to have an intellectual disability if there is also a diagnosis of ID and adaptive assessment by a licensed clinical psychologist affirming significant impairment in daily living skills due to ID.

Significant impairment and training and supports are similarly measured by an adaptive behavior assessment completed by a licensed clinical or school psychologist, or doctor of medicine or osteopathic medicine, who has training and experience in test interpretation of adaptive behavior scales for people who have intellectual or developmental disabilities.

For very young children (under 5), impairments may be documented by early childhood assessments completed by early childhood evaluators with at least a Masters level degree, and evidence at least two different areas of impairment two standard deviations below the mean.

For eligibility, impairments must be directly related to the qualifying ID or DD condition, and not primarily from ADHD, a mental, emotional, personality, substance, or learning disorder, or motor or sensory impairment. The qualifying ID or DD condition and impairments must be indefinite, or are expected to continue, indefinitely.

If a child's caseworker identifies an applicable diagnosis by a qualified professional and completes a Request for Eligibility Determination form as the guardian, or assists the guardian in completing the application, it is submitted to the local CDDP in the county where guardianship is established. CDDPs in turn obtain necessary release forms, complete records collection, and may order a consultative evaluation as part of due diligence to make an eligibility determination in accordance with ORS 427.005 *et seq.* and OAR 411-320, sometimes in consultation with ODDS's Diagnosis and Evaluation Coordinator. The CDDP keeps records of all applications for I/DD services in accordance with the Secretary of State record retention guidelines in Oregon Administrative Rule 166-150-0055, including related eligibility determinations.

**III. V.P. (1.0 hour of direct testimony).**

V.P. is a current foster youth, soon to be transitioning out of the care of Child Welfare. V.P. may be called to testify regarding various supports and services they received to help transition out of the care of Child Welfare, as well as regarding their overall experience with Oregon's child welfare system.

**IV. Heather Collee (1.0 hour of direct testimony).**

Ms. Collee is the Americans with Disability Act ("ADA") and Equity Coordinator within Child Welfare. In addition to all other topics and information Ms. Collee will testify to as set

forth in defendants' previously-filed Lay Witness Statements (Defs.' Lay Witness Statements at 53, (Dkt. 386)), Ms. Collee will testify that Child Welfare tracks children and young adults who require accommodation due to disabilities, including intellectual and developmental disabilities and mental health conditions.

**V. Sara B. Fox (2.0 hours of direct testimony).**

Ms. Fox is the current Program Manager of Treatment Services within Child Welfare. In addition to all other topics and information Ms. Fox will testify about as set forth in defendants' previously-filed Lay Witness Statements (Defs.' Lay Witness Statements at 94, (Dkt. 386)), Ms. Fox will explain the various levels of care provided by different Qualified Residential Treatment Programs ("QRTP") and PRTFs. She will also testify that while QMHPs perform independent assessments to determine whether a child meets the medical eligibility requirements to qualify for placement in a QRTP or PRTF, QHMPs do not make any disability determinations as part of these assessments. Thus, as Ms. Fox will explain, a child or young adult's eligibility for placement in a QRTP or PRTF is not an indicator of the presence of a disability.

DATED: April 29, 2024

ELLEN ROSENBLUM  
ATTORNEY GENERAL  
FOR THE STATE OF OREGON

*/s/ Adele J. Ridenour*

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